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**SUPPLEMENTAL COMMENTS OF THE  
DEPARTMENT OF THE PUBLIC ADVOCATE  
DIVISION OF RATE COUNSEL**

**On the Revised Straw Proposal Dated March 10, 2009:  
New Jersey's Offshore Wind Renewable Energy Certificate ("OREC")**

**BPU Docket No: EX08100930**

**SUBMITTED: April 1, 2009**

## **1. Introduction**

The Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") would like to thank the Board of Public Utilities ("Board" or "BPU") for the opportunity to present supplemental comments on the Straw Proposal submitted to stakeholders for comment by the Office of Clean Energy ("OCE"), dated March 10, 2009, as well as providing our response to the comments of other parties that participated in the Public Hearing on this matter in Trenton, New Jersey, on March 26, 2009.

The purpose of the OCE's Straw Proposal is to facilitate the goals established in the Energy Master Plan ("EMP") released on October 23, 2008 that increases New Jersey's commitment to renewable energy to 30 percent of electricity sales by 2020. An integral part of the EMP has been the call for a minimum of 1,000 megawatts ("MW") of offshore wind capacity to be developed by 2012, and a minimum of 3,000 MW of offshore wind capacity by 2020.

The OCE, in its revised straw proposal offered for comment on March 10, 2009, proposes to establish an offshore wind set-aside or "carve-out," within New Jersey's Renewable Portfolio Standard ("RPS"). This carve-out would establish a new tradable credit referred to as an offshore wind renewable energy certification or "OREC." This OREC would have a companion maximum price referred to as an offshore wind alternative compliance payment or "OACP."

Rate Counsel would again like to reiterate our support for the OCE's goals of attempting to create greater regulatory certainty to lower the cost, and ensure the development of offshore wind. We do not however, support the method in which the OCE proposes to accomplish these goals. Our concerns about this proposal were outlined in detail in our comments submitted to the Board on March 26, 2009 (hereafter "Initial Comments"). In summary, our concerns address the following concerns and topics:

- The Creation of New Set-Asides is Unnecessary
- The Straw Proposal Would Undermine the Traditional Goals of a RPS
- The Straw Proposal Would Result in a New and Potentially Costly Administrative Structure
- The Straw Proposal is Inconsistent with the Board's Past Rejection of a Feed-In Tariff
- The Straw Proposal Could Increase BGS Rates
- The Straw Proposal Lacks a Rate Impact Analysis
- The Straw Proposal Unnecessarily Shifts Market Risk from Developers to Ratepayers
- Excess Revenues Should be Used to Lower Rates
- The Use of Non-Price Evaluation Terms Potentially Biases Outcomes

Rate Counsel is also concerned about the specific proposal to create an entirely new and unneeded framework that sets a troubling precedent and undermines the traditional policy goals of using a RPS to support renewable energy development.

As we noted in our earlier-filed comments and public testimony, Rate Counsel recommends that the Board utilize an already fully-vetted framework for supporting offshore wind energy development. This framework, established during the course of the Generic Solar Renewable Energy Certificate ("SREC") proceedings, and later expanded in individual electric distribution company ("EDC") filings, could be easily modified to accommodate offshore wind projects.

Our supplemental comments will address a few issues and questions that were raised during the Public Hearing.

## **2. Proposed Procedural Schedule**

Rate Counsel proposes that the Board modify the procedural schedule. Rate Counsel believes this schedule should be delayed for at least two reasons: (1) the current schedule is not feasible from a development perspective and (2) no critical rate impact analyses have been conducted.

On the first point, comments offered by several potential offshore wind developers at the Public Hearing clearly indicated that the current OCE proposal to initiate this program in 2013 was entirely too expedited. Wind developers noted that a number of the meteorological stations needed to get accurate wind profiles in various offshore areas are not in place and clearly not reporting important data needed to develop offshore wind power generation estimates. At least one developer indicated that the current schedule would result in price offers that were either "incorrect" or included "additional risk premiums" that would be paid by ratepayers.

Secondly, and more importantly, the schedule needs to be delayed to accommodate a rate impact analysis of the OCE Straw Proposal. To date, no rate impact analysis has been offered. As we noted in our Initial Comments, it is hard to evaluate the overall merits of this program without reference to program costs. Ultimately, program costs will determine the effectiveness of this program over other alternatives, and most importantly, the rate impacts that will be imposed on ratepayers from this new program.

Rate Counsel believes a rate impact analysis is a critical component of any market transformation process, particularly one as large as that proposed by the OCE. The capital costs of offshore wind alone could be as much as \$12 billion on a constant dollar basis and \$7.8 billion on a net present value (“NPV”) basis.

Board Staff indicated at the public hearing that a consultant was either secured, or in the process of being secured, to conduct a rate impact study. Rate Counsel recommends that the schedule be extended to accommodate the consultant’s study, and to allow at least 3 weeks for Rate Counsel and its consultants to evaluate, comment upon, and provide alternative and independent rate impact estimates.

The additional time could be used for other constructive work, like defining the terms and conditions for market participation and the definition of a “designated facility.” This additional time could also be used to explore various methods of incorporating these fundamental changes into the BGS process as well as the numerous legal issues of the proposed offshore wind market design (i.e., issues related to the Board taking title to various different levels of wholesale power revenues and ORECs).

### **3. Qualification Standards**

Several developers offered comments supporting strong qualification standards for participation in a future, earmarked New Jersey offshore wind program. Rate Counsel supports strong standards for participation, but would caution the Board in developing standards that are overly-stringent such that they serve as a barrier to entry. Overly-restrictive qualifications will limit the number of participants in the process and creates opportunities for market power. Thus, the Board needs to be very cautious in setting these participation standards, as well as ongoing performance standards, in any future offshore wind market design.

The OCE has not provided any specific proposals for participation qualifications, or annual performance standards, in its Straw Proposal. Rate Counsel looks forward to working with the OCE and other stakeholders in defining reasonable standards that encourage participation, innovation, entrepreneurship, and reasonable prices for offshore wind energy.

### **4. Implications for the BGS**

Several parties, including many offshore wind developers, expressed serious concerns and reservations about the BGS implications created by the Straw Proposal. Almost all parties at the Public Hearing expressed concerns about the uncertainty that this proposal would create for Load Serving Entities (“LSEs”) in terms of both (a) the speed at which this proposal would progress and (b) the method in which compliance obligations would be allocated to LSEs (i.e., OREC obligations). We agree with several parties’ position in the Public Hearing expressing concerns that defining OREC responsibility as a percent of an unknown sales level in any given year creates uncertainty and risk that will be passed along directly to ratepayers.

## **5. Offshore Wind Power Sales**

Several offshore developers expressed concerns about the method in which both energy sales and potential capacity would be valued against their overall OREC support levels in any given year. In its Initial Comments, Rate Counsel expressed strong disagreement with the proposal to define ORECs as a “full loaded” rate that somehow nets-out wholesale power sales revenues. We believe that ORECs should represent the net difference that developers need to finance their projects, not their total revenue support levels (i.e., “revenue requirement”). Developers need to incur wholesale power market risk, not ratepayers. The goal of any offshore wind market design should be to protect developers from regulatory risk – not market risk.

The myriad discussions about the appropriate wholesale energy price, and how to set the value of capacity, that occurred during the course of the Public Hearing highlights the confusion and complications for Board regulation of this aspect of the Straw Proposal. Utilizing this proposed “net-back” approach minimizes offshore developer incentives to (a) maximize wholesale energy sales, and (b) to secure those energy sales revenues (and financial support) through any long term contracting. Setting the sales revenue targets to the day-ahead market is not something usually done in other types of large power generation development projects, and Rate Counsel does not understand why the OCE would propose such a mechanism for its offshore wind energy market design.

In today’s market, most large-scale power generation projects usually base a large share of their project economics on a known, longer-term contract. Basing total project economics on spot market outcomes, like a day-ahead market, is a practice that passed-away in the aftermath of the Enron era. Setting a standard of this nature shifts considerable wholesale pricing risk to ratepayers and virtually denies them the benefits of clean, zero-fuel cost, electricity. Day-ahead wholesale market prices are determined, at the margin, by fossil (primarily natural gas) prices. The OCE’s proposal would essentially impose fossil-fuel price volatility on wind energy (through highly variable OREC charges), which is an outcome incongruous with the goals of the Board’s RPS.

## **6. Contracting Certainty**

Many offshore wind developers expressed concerns about the lack of regulatory certainty included in the OCE Straw Proposal. The lack of regulatory certainty (through contracting) is a fundamental shortcoming in the OCE Proposal and if not corrected, will result in either higher prices for ratepayers and/or uncertain levels of offshore wind development. Market power is already a potential problem with the current proposal, and would only be exacerbated by maintaining this market uncertainty since only a handful of developers (those able to incur this risk) would participate in the process.

Rate Counsel notes that if the Board adopted our recommended REC-contracting proposal (summarized again below), offshore wind developers would get the revenue support certainty

they need through long-term contracting with the EDCs. REC contracts with offshore wind developers would be binding and supported through either EDC charges to ratepayers and/or the Societal Benefits Charge (“SBC”) via the Clean Energy Fund.

Despite all of the details and complicated provisions, the OCE’s Proposal does not incorporate the certainty and security offshore wind developers need: all of the developers offering comments noted they need more in terms of certainty from this proposal. Rate Counsel believes that our proposed REC contracting approach provides both regulatory certainty and regulatory consistency with the Board’s overall policies. The OCE proposal would represent a dramatic departure from the Board’s past mechanisms for securitizing renewable energy (solar) and create a considerable number of administrative and legal challenges. If the Board wants to move forward quickly and efficiently with meeting the offshore wind energy goals of the EMP, then Rate Counsel’s proposal seems to be the best course of action.

## **7. Recommendation: The Current SREC Contracting Approach Should be Modified to Support Offshore Wind Energy**

Rate Counsel recommends that the Board direct stakeholders to this process, particularly EDCs, to work collaboratively in modifying the current SREC contracting approach to accommodate offshore wind development. Rate Counsel offers the following suggestions for consideration in this process:

- The Board would direct each of the EDCs to support a target amount of offshore wind energy. There would be no specific ORECs or any other specific “set-aside.”
- The Board and other stakeholders would develop a long-run contracting process for RECs generated by offshore wind energy that, as starting point, follows some variation of the schedule offered by the OCE in its Straw Proposal. Some share of the EMP’s offshore wind goal can be securitized, while the remaining share is left to the bi-lateral market much like the current plans being utilized for solar energy.
- EDCs would be required to enter into long-term REC contracts with offshore wind energy developers only.
- EDCs would conduct a Request for Proposals (“RFP”) process, overseen by an independent third-party administrator, preferably the same third party administrator overseeing the solar energy RFP process.
- Offshore wind developers would submit fixed long term bids for the RECs generated from their projects.
- EDCs would award REC contracts to winning (least cost) bids subject to Board approval. Rejected bids would not be allowed to participate (serve as supply sources) until the next RFP process.

- EDC REC contracts would be for the specific price and quantity offered in the bid, not a market clearing price.
- EDCs would auction RECs to the market in a fashion similar to SRECs.
- EDCs would develop mechanisms, including the use of the Clean Energy Budget funded by the SBC, to recover the prudently-incurred cost of the program including:
  - Administrative costs associated with the program.
  - Credits for revenues collected from the REC auction that are in excess of those paid under longer-term REC contracts arising from the competitive bidding process.
  - Charges to make up for shortfalls between revenues generated from the REC auction proceeds and the long-term REC contracted amounts from the competitive REC bidding process.
- The Board will establish a circuit breaker that restricts continued progress in developing future offshore wind energy capacity to some absolute cost, or percent cost increase, constraint.

Rate Counsel believes this approach would be more efficient and transparent relative to the proposal offered by the OCE.

Lastly, during the course of the public hearing, President Fox asked Rate Counsel how our proposal would set Alternative Compliance Payment (“ACP”) values. Rate Counsel would propose establishing a different set of ACP values for those projects participating in the competitive offshore wind bidding process. These unique ACP values would be set by the Board with stakeholder input prior to any offshore wind competitive bidding process. Renewable energy projects participating in bi-lateral market (i.e., the non-offshore wind contracting market) would face the same set of Class 1 ACPs and the same process for setting those ACPs, as they do today. The Board could consider withholding the specific value of the offshore wind contracting ACPs until after a competitive bid if there are concerns that offered bids will move to the ceiling price if it is known in advance.